No. 83-2126

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF OKLAHOMA,

Petitioner,

v.

TIMOTHY R. CASTLEBERRY,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF OKLAHOMA

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., AND THE LEGAL FOUNDATION OF AMERICA, IN SUPPORT OF THE PETITIONER

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LEGAL FOUNDATION OF AMERICA,
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This is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Michael C. Turpen, Attorney General, State of Oklahoma, Counsel for Petitioner, and Charles Foster Cox, Counsel for Respondent. Letters of Consent of both parties have been filed with the Clerk of this Court.

INTEREST OF AMICI

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* fifty-eight times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 12,600 members in 62 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The Legal Foundation of America (LFA) is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

Amici well know the problems faced by police officers in their good faith attempts to conduct searches and seizures that

comport with the myriad of rules and exceptions that have been judicially engrafted upon the Fourth Amendment. The state of this intricate complex of rules as applicable to the search of automobiles compels these organizations to speak on behalf of law enforcement officers in this case, so that this Court will complete the task of adopting a workable bright line rule for the search of vehicles left unfinished by *United States* v. *Ross*, 456 U.S. 798 (1982).

ARGUMENT

I.

THIS COURT SHOULD CLEAR AWAY THE INCOMPREHENSIBLE DISTINCTIONS EXISTING IN THE RULES FOR WARRANTLESS SEARCHES OF AUTOMOBILES AND ADOPT A BRIGHT LINE RULE FOUNDED UPON THE ORIGINAL PURPOSE AND INTENT OF *CARROLL* V. *UNITED STATES* THAT DOES NOT REQUIRE A CONTAINER EXCEPTION AND THAT CAN BE READILY UNDERSTOOD AND APPLIED BY POLICE OFFICERS

Americans for Effective Law Enforcement has been privileged to file many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *International Association of Chiefs of Police* and the *Legal Foundation of America*. Those briefs have presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, as in the brief *AELE* and *IACP* filed in *United States* v. *Ross*, we are dispensing with an extended analysis of the case law. We confine our brief essentially to a suggested resolution of the perennial police dilemma caused by the intolerable confusion that continues to confront them as they must determine what containers within an automobile they can or cannot search—*after having already made an accurate judgment as to probable cause to search the vehicle itself.*

As we did in *Ross*, we urge the Court to adopt a uniform rule which would permit the search of all containers found in a vehicle when the prerequisites for a search of the vehicle itself have been satisfied, as prescribed in *Carroll* v. *United States*, 267 U.S. 132 (1925). Although this Court in *Ross* took a substantial step in clarifying the rules with respect to the search

of vehicles, the condition it imposed, to the effect that where the police have probable cause to believe that a specific container in a car has contraband they must first obtain a warrant, has perpetuated some of the confusion concerning vehicle searches that existed prior to *Ross*. We repeat much of our argument in our *amici* brief in *Ross* and point out additional problems raised by that case.

The decisions of *Arkansas* v. *Sanders*, 442 U.S. 753 (1979), and *United States* v. *Chadwick*, 433 U.S. 1 (1977), left intact in *Ross*, which protect some containers from searches while allowing others to be searched, are based upon the test of "reasonable expectation of privacy." That test evolved in *Katz* v. *United States*, 389 U.S. 34 (1967), in which the Court concerned itself only with the question of whether a search had actually occurred within the meaning of the Fourth Amendment. It seems highly irrational, however, to hold that a search occurs in violation of the Fourth Amendment when the police make a nonconsensual inspection of a suitcase found in an automobile where they had presearch knowledge that it contained contraband or evidence, while no violation occurs if they did not have such presearch knowledge but only a general knowledge that contraband would be found somewhere in the vehicle. *The issue should only be whether the search was reasonable.* It is impractical, and of no guidance to the police, to make the reasonableness of a search of a container depend upon the precise degree of privacy expectation with respect to each such container. To the extent that *Ross* perpetuates this rule we urge the Court to repudiate it.

There are myriad grades of expectation of privacy, just as there are myriad grades of police intrusion. This Court has indicated in *Dunaway* v. *New York*, 442 U.S. 200 (1979), that the police need fixed standards and that a sliding scale approach with a number of gradations is unsatisfactory. The citizen is better protected if the officer clearly knows what is permissible and what is not, without the appendage of a near-disabling exception to a general rule.

Perpetuation of any part of the "expectation of privacy" test in automobile search and seizure cases offers no satisfactory guidance to the police with respect to containers found within the vehicle. It does not provide an understandable distinction. The Court apparently thought it was doing that in *Ross*, but what the police need is understandable guidance rather than esoteric distinctions which are meaningless to them. *Amici AELE* and *IACP* are involved in police training programs at the national level and can attest to the fact that teaching the *Ross* container distinction to police officers is a near impossibility.

Requiring the police to pursue the only available safe sure investigative practice of seeking a search warrant for the examination of containers found in a vehicle produces several unfavorable consequences. First of all, where there is probable cause to search an automobile—and this is the premise for all we suggest—a magistrate will rarely refuse to issue a warrant. In such instances police compliance with the formality required by *Ross* may be viewed as a satisfaction of the majesty of the law, but the price for this unnecessary reward is an unaffordable one. It is unaffordable not only in terms of police service but also as regards the judicial system as well.

Secondly, police time is desperately needed for the detection and prevention of crime, and for the apprehension of dangerous offenders. The time needed for the procurement of a warrant to search a container found in a car could be better devoted to those purposes. Several hours may be required for a police officer to draft and present in court a search warrant application and a proposed search warrant. Meanwhile, another officer has to spend his time securing and holding the container. Then, too, in rural areas an even longer period of time may be required to obtain a warrant. Thirdly, as this Court knows all too well, the judiciary is greatly overburdened with cases awaiting determinations of guilt or innocence, and they have precious little time to spend on formality compliances.

In addition to wastage of police and court time, consideration is in order for the motorist whose vehicle containers do not in fact contain illegal evidence, irrespective of the existence of probable cause for the search. An on-the-scene search would have conserved his time as well as that of the police and the court. This was one of the considerations underlying the Court's decision in *Chambers* v. *Maroney*, 399 U.S. 42 (1970), which re-affirmed the right of officers to make a warrantless search under the *Carroll* doctrine.

There is an additional and compelling reason why the distinction imposed by *Ross* should be eliminated. Quite frankly, it may encourage some police officers to gather *less* probable cause information than they might otherwise do. *Ross* tells them, in effect, that if their probable cause information for the search of a vehicle is container specific they need a warrant to search the container, whereas if their probable cause information is not container specific, they do not need a warrant for containers they find that could hold the object of their search. In some cases informants may not be encouraged to tell the police exactly *where* in a vehicle contraband may be found. Such a rule does not promote the spirit and intent of the Fourth Amendment to be as thorough as practical and possible in gathering information upon which to base probable cause, as was the rationale of the holdings of this Court in *Draper* v. *United States*, 358 U.S. 307 (1959), *Aguilar* v. *Texas*, 378 U.S. 108 (1964), and *Spinelli* v. *United States*, 393 U.S. 410 (1969). *Amici* support this salutory rationale and urge this Court to eliminate the *Ross* container distinction because it's practical, though unintended, effect may not actually promote the broadest possible goals of Fourth Amendment compliance by the police.

We urge the Court to adopt a rule in automobile search cases comparable to that applicable to the search of an arrested person. Of him a full search is permissible, regardless of whatever expectations of privacy he may have had as to the

contents of his pockets. A clear cut pronouncement should be made by the Court that *once there is probable cause to search a car, the police may search any container within any part of the car.* As to the exclusionary rule in this type of case, and, in fact, all others, exceptions should be made for good faith mistakes by police officers as recognized by this Court in *United States* v. *Leon,* ___ U.S. ___, 104 S.Ct. 3405 (1984) and *Massachusetts* v. *Sheppard,* ___ U.S. ___, 104 S.Ct. 3425 (1984).

As we noted in our *amici* brief in *Ross,* if the police abuse the suggested container-search privilege, there are adequate available legal remedies, criminal and civil, and the force of public opinion is a factor that should not be overlooked, especially in this type of case where the Court has granted a guide-lined privilege urged upon it by the police themselves. We urge the Court to complete the task of revising the rules for the search of vehicles it undertook in *New York* v. *Belton,* 453 U.S. 454 (1981) and *Ross* by eliminating the container distinction once and for all.

CONCLUSION

Amici respectfully submit that the decision of the Court of Criminal Appeals of Oklahoma should be reversed on the facts and law, and on the basis of sound judicial policy.

Respectfully submitted,

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